

House Judiciary Civil Practice Subcommittee Amendment #1

Amendment No. 1 to SB3204

Cohen
Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 3204

House Bill No. 3170*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 50, Part 1, is amended by adding the following as a new appropriately designated section:

8-50-1-____. (a)(1) It is the intent of the general assembly that state employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority or entity, evidence of activity by a state agency or state employee or state contractor constituting violations of state or federal law or regulations, fraud in the operations of government programs, misappropriation of state or federal resources, acts which endanger the health or safety of the public or employees, and mismanagement of programs, funds, or abuses of authority.

(2) The general assembly further finds and declares that public servants best serve the citizens when they can be candid and honest without reservation in conducting the public's business.

(3) It is the further intent of the general assembly that state employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to, or testifying before, appropriate legislative panels.

(b)(1) No head of any state department, agency or institution, state employee exercising supervisory authority, other state employee or state contractor shall recommend or act to discharge, demote, suspend, reassign,

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transfer, discipline, threaten or otherwise discriminate against a state employee regarding the state employee's evaluation, promotion, compensation, terms, conditions, location or privileges of employment, nor may any state employee or state contractor retaliate against another state employee because the employee, or a person acting on behalf of the employee, reports or attempts to report, verbally or in writing:

(A) the willful efforts of such person or agency or contractor to violate a state or federal law, rule or regulation which had or would have had a material and adverse effect upon program operations or program integrity, or the willful efforts to conceal such a violation;

(B) acts which constituted fraud against the state, the federal government, the public or any fellow employee;

(C) the willful misappropriation of state or federal resources;

(D) acts which posed an unreasonable and specific danger to the health or safety of the public or employees; or

(E) acts constituting gross mismanagement of a program, gross waste of state or federal funds, or gross abuse of authority;

(2) The head of the state department, agency or institution or other state employee exercising supervisory authority over the state employee may, however, take any appropriate action or appropriate disciplinary action in relation to the reporting or attempted reporting of any information which is believed in good faith by such department head or other state employee exercising

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supervisory authority to be fraudulent, dishonest or with willful disregard for the truth or falsity of the information.

(3) No head of any state department, agency, or institution, state employee exercising supervisory authority, other state employee or state contractor shall recommend or act to discharge, demote, suspend, reassign, transfer, discipline, threaten or otherwise retaliate or discriminate against a state employee regarding the state employee's evaluation, promotion, compensation, terms, conditions, location, or privileges of employment because the employee refused to carry out a directive if the directive constitutes a violation of state or federal law, rule or regulation, policy or procedure which materially and adversely affects the operations or integrity of a program or if the directive poses an unreasonable and specific danger to the health or safety of the employee, the employees or the public.

(c) Any state employee injured by a violation of subsection (b) may maintain an action in circuit or chancery court within one (1) year after the occurrence of the alleged violation of this section for actual damages, injunctive relief, or other remedies provided in this section against the person or agency or state contractor, or any of them, who committed the violation. An act or conduct constituting part of an alleged continuing pattern of violations of this section shall only be considered in calculating any damages if an action is brought within one (1) year of the occurrence of the act.

(d)(1) A court, in rendering a judgment in an action brought pursuant to this section, may order injunctive relief, actual damages, reinstatement of the

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employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination thereof.

(2) If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees.

(3) If in an action for damages the court finds that the employee was injured by a willful and malicious violation of this section, by a criminal violation based upon this section or by a violation based upon an effort to obtain personal gain, the court may award as damages up to three (3) times the amount of actual damage plus costs and reasonable attorney's fees against the individual or individuals found to be in violation of this section.

(e) No head of any state department, agency or institution or other state employee exercising supervisory authority nor any agency of the state of Tennessee shall be found liable pursuant to this section if the head of any state department, agency or institution or other state employee exercising supervisory authority was acting within the scope of such employee's apparent lawful orders or authority and in good faith in such person's reasonable interpretation of any rule or regulation or was acting in good faith in such person's direction to the employee to implement any law, regulation, policy or procedure related to the operation of any program of such agency which is the subject of the report or attempted report pursuant to this section.

(f) Notwithstanding any law to the contrary, any head of any state department, agency or institution or other state employee exercising authority

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shall be subject to the protections of § 8-42-103 if it is determined such person was acting within the scope of such person's apparent lawful orders or authority and was not acting willfully, maliciously, criminally or for personal gain; and such person shall be further subject to the protection contained in the provisions for the board of claims under § 9-8-112 relative to the payment of any judgments, costs and attorneys fees where it is determined that such person was acting within the scope of such person's apparent lawful orders or authority and was not acting willfully, maliciously, criminally or for personal gain.

(g) Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation.

SECTION 2. This act shall take effect July 1, 2000, the public welfare requiring it.